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Shipley (p. 1)

10
A
S P E E C H

NEVER INTENDED TO BE SPOKEN,

IN ANSWER TO A

S P E E C H

INTENDED TO HAVE BEEN SPOKEN

ON THE

B I L L

FOR

ALTERING THE CHARTER

OF THE

COLONY OF MASSACHUSET'S BAY.



Dedicated to the Right Reverend
THE LORD BISHOP OF ST. A—,

L O N D O N :
PRINTED FOR J. KNOX, IN THE STRAND.
MDCCLXXIV.

[Price, One Shilling.]



TO THE
BISHOP OF ST. A—.

MY LORD,

THE propriety of dedicating the following sheets to your Lordship, is too obvious to occasion a long avocation from the more serious duties of your life. To the reasons assigned in the Advertisement for printing a Speech, equal to any of the noblest pieces of eloquence the world are in possession of, permit me to add one reason

A 2

more

more for printing mine,—That I have neither an hereditary nor temporary Seat in Parliament. I have the honour to be,

My LORD,

Your Lordship's

Most obedient and

Most humble Servant,

THE AUTHOR.

A

S P E E C H, &c.

MY LORDS,

I AGREE with the right reverend Prelate, that it is a matter of the utmost importance, to compose or even moderate the dissensions that subsist between this country and her unhappy Colonies; and that in all our consultations, we ought never to lose sight of a perfect and cordial reconciliation with North America.

B

Could

Could human prudence have foreseen, that the Americans would find advocates for their rebellion, not only amongst the sons of Britain, but also amongst the members of both houses of Parliament, it had been better if the Stamp Act had never been made. But, as the foresight allotted to man, could not figure to itself such apostacy amongst the guardians of their own and the nation's rights; as the remembrance of the treasure, and of the blood, expended in the defence of America forbade us to anticipate such base ingratitude on the part of our Colonies; as the right itself is justifiable on the soundest principles of law and reason, and perfectly consistent with the nature of our free constitution; I cannot concur in censuring a law, that has been brought into disgrace by the fluctuating
and

and pusillanimous politics of succeeding administrations; which have thereby rendered a wise and effectual measure fatal to the peace and prosperity of the British empire.

Were we diligently to enquire into the causes of these commotions in America, we might possibly trace them to the impenetrable recesses of the human heart on this side the Atlantic; as the contention amongst our statesmen at the helm, for places, power, and profit, first inspired the Americans with the most distant hopes of success in this bold and unprecedented demand. Trifling and absurd distinctions, thrust upon the public in place of solid argument, by men whose legal and parliamentary abilities ought, out of gratitude, to have been em-

ployed in the salvation, not in the destruction of their country, encouraged the Americans in their resistance to legal authority ; which resistance has since, by the instigations of the confidential servants of the crown, swelled into outrageous rebellion, accompanied with such daring and unjustifiable acts, as have silenced every unprejudiced, every rational advocate, the right reverend Bishop excepted, who in so masterly and orthodox a manner, in the pulpit and in the senate, militates in favour of his American brethren, and piously espouses treasons unparalleled in either profane or sacred history.

When lawyers and statesmen, when prelates and patriots thus combine to delude the ignorant multitude, is it to be wondered

wondered, that the Americans are in arms ?

To the resentment of partial and injudicious restraints in the commerce of our North American Colonies ; to the spleen and intrigues of discarded ministers ; to the ignominious removal of our troops from a Colony actually in rebellion ; but principally to the hasty and improvident repeal of the Stamp Act, the revolt of America is to be ascribed. In the whole extent of human affairs, in the annals of every country in every age, there is not to be found a single instance of a Colony daring to claim an exemption from that authority which binds and controuls the parent state ; far less, my Lords, of a country, that has countenanced this audacious and insolent demand,

demand, by an abject cession of its vital rights ; thereby rendering it difficult, if not impossible, to reassume its natural and parental authority, without the horrors and convulsions of a civil war.

Difficult as the task is, the hour is come when it must be attempted. The being of this State demands it ; and I trust, that this nation, which has, for near a century past, protected the rights of almost every power in Europe, will not start back, and shrink at the defence of its own. We have expended millions, and shed oceans of blood, where the interests of this Island were but little involved ; and now that our all is at stake, now that the dependence of our Colonies is in question, we doubt, we hesitate, as if destitute of right or power.

—Neither

—Neither might nor power are wanting; there wants but unanimity: and resolution to crush in the bud this unnatural rebellion, destitute of every real support, but what it derives from our own unprincipled divisions at home. The man who thinks he vindicates the general rights of mankind, or adds to the permanency and stability of the liberties of Great Britain and America, by asserting the freedom of the Colonies from parliamentary taxation, is highly mistaken: he is forging chains for this Kingdom, for himself and his posterity; involving Britain and America in one common ruin; and seconding, in the most speedy and effectual manner, the wishes of our watchful and potent rivals, the French, by thus diminishing, more than the vast Atlantic, the subjects of the same Imperial Crown;

Crown ; making the Americans allies, instead of subjects ; no stronger bond of union left, than mutual interest ; without authority on our part, without allegiance or subordination on theirs. And what sort of bond this mutual interest, this happy intercourse of commerce, is, every page of our history, every transaction of the last four-score years, ought feelingly to instruct us.

Be not deceived, my Lords, by Utopian notions of an interested union between states ; nor vainly imagine, that two such distant countries can long be cemented by such weak and variable ties as interest and affection. Mankind, in every corner of the universe, is the same, equally self-interested, ungrateful, and capricious ; and equally, I fear, strangers to public virtue.

Some

Some state empirics there are, who style themselves Patriots, and magnify their zeal for liberty and the constitution. With them, it is patriotism in an Englishman to dismember his country. In an American, it is heroism to rebel against that authority, which, for two centuries, has anxiously protected the Colonies from every danger, foreign and domestic; nursed them with the tenderness and affection of a parent; bared her bosom for the support of these pelican children; and reared in her doating arms a generation of vipers and parricides. —These, my Lords, are our heroes!—these are our patriots!—To me they appear as so many Cromwells of their country.

The Right Reverend Advocate for America has given us an indisputable proof of

his discernment, in totally avoiding the question of right. It will be necessary for me, however, to examine on what principles the Americans ground their objections to the right in the British Parliament to tax them; the establishing of this right being the foundation of that conduct which, I think, Parliament ought to hold towards her Colonies.

The principal, and indeed the only objection to which it will be requisite to give a formal and direct answer, is this; *That the Americans are not represented in Parliament, and therefore not subject to taxes imposed by it; representation being, by the constitution of this realm, a necessary ground of taxation.* To this I answer, *That, by the constitution, representation is not necessary*

sary to taxation ; and that, if it was, the Americans are represented.

The truth of this seemingly anti-constitutional assertion, That representation is not a necessary ground of taxation, will manifestly appear, from two considerations. The first is, That Parliaments, in the times of our Saxon ancestors, from whom we boast that the form and spirit of our constitution is derived, assessed and levied taxes before the Commons sat in parliament by representation ; for this accession of new force and vigour to the constitution was not made till the reign of Henry the First, probably not till the 49th of Henry the Third. The right of taxation was therefore prior to, and independent of representation, unless the consequent can be made to precede

the antecedent, or the effect become the parent of the cause.—The second consideration is, That there are more millions of subjects unrepresented in England, and yet taxed, than there are inhabitants in British America. Out of eight millions of inhabitants in this kingdom, there are not five hundred thousand electors: the other seven millions five hundred thousand are exactly on the same footing with the three millions in America.

If our ancestors were taxed without being represented at all; if at this hour there are more Englishmen unrepresented, and yet taxed, than there are mutinous inhabitants in all our Colonies, how, in the name of common sense, can representation
be

be a necessary and *sine qua non* ground of taxation?

If the right to impose taxes devolved to Parliament, in consequence of the admission of the commons into a share of the legislature, where has this doctrine been treasured up for so many centuries? It is not so much as hinted at in any of the various acts of Parliament, which establish this noble inheritance of the subject, from Magna Charta to the Revolution. The petition of right, that pillar of the liberties and franchises of Englishmen, is silent upon this head; yet this petition, and its prayer, *That no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of Parliament,*

ment, was the petition and prayer of the subject universally. It came from, and was in behalf of, every individual dwelling under the protection of the Crown of England; and its benefits and obligations extended to all alike. The ancestors of the Americans were parties in this petition, and they and their posterity, for a century and a half, have enjoyed the sweets of it. The Americans are therefore concluded and bound by this petition, and are entitled to no greater freedom than their ancestors demanded, and was confirmed to them in common with the rest of the subjects. By this act of their forefathers, the Americans are included within the circle of parliamentary legislation and taxation, and their descent there, or migration here, does not vary the nature of their dependence

ence on, or submission to, the crown and legislature of England, nor create one new right, privilege, or exemption whatsoever.

At the Revolution, what had been petitioned for by the subject, and solemnly assented to by the crown, was confirmed by the Bill of Rights; an act whose influence extended to every part of the British dominions, as the crown was disposed of by that act. No exemption on the foot of nonrepresentation was there established; but in this, and in every other declaration of the rights of the subject, the grant of Parliament is the test of legality in a tax. Our ancestors, short-sighted, ignorant men! thought, (as I have the misfortune to think, and shall presently explain) that the Parliament

liament represented the whole empire: The merit of a recent and contrary discovery, which has contributed so mightily to the tranquillity of the Colonies, and the benefit of Great Britain, was reserved for this illustrious age, whose patriots are discarded courtiers, whose oracles the outcasts of mankind.

Whatever opinion may be formed of me, by those whose doctrines I most cordially differ from, no man living is a steadier friend to liberty than I am; no man more ardently reveres our glorious constitution; but frantic, enthusiastic, undefined liberty, I abhor: I had rather (to use the language of our immortal Shakespear, whose fire I wish I could borrow as easily as his words) be a toad, and feed upon the vapour of a dungeon,

dungeon, than live in a state convulsed with jarring, incoherent systems of freedom. Whilst I live I will abide by the constitution as delivered to us by our ancestors; and with every ability of mind and body, maintain the legal prerogative of the crown, the dignity and privileges of Parliament, and the universal jurisdiction of the British legislature, as the only solid foundation of general liberty.

On these considerations, the right of Parliament to tax America might be safely rested; but as it is of consequence, in a matter of such high and national import, to remove all doubt (as far as my poor abilities, struggling against the tide and torrent of the times, can) I shall recur to the second part of my answer, to wit; *That the Americans are represented.*

D

There

There is no proposition clearer to my understanding than this; *That the Parliament is, collectively, the representative of the British empire*; in so much that it is incapable of illustration by argument. Yet, that the validity of this important truth may not depend on my judgment, or assertion alone, I beg leave to call the attention of the house to an authority inferior only to Divine Revelation; the authority of Parliament, drawn from a period of our history, when the spirit of colonization was not unknown in this kingdom, and when no dispute subsisted between People and Parliament, to influence the judgment of the latter in declaring the extent of representation.

The authority I allude to is the petition or supplication of Parliament to Queen Mary,

Mary, in 1554. The words of the preamble to it are these: *We, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, representing the whole bodie of the realme of England, and dominions of the same, in the name of ourselves particularly, and of the said bodie universally, offer this our most humble supplication, &c.*

I do not apprehend that words can more fully declare the nature of parliamentary representation, than those now read declare Parliament *the universal representative of the dominions of the Crown of England.*—In this parliamentary acceptance of representation, I will heartily concur in maintaining, that it is of the very essence of taxation. But the speculative opinions of

modern politicians, and of the ablest writers on government, who reason from what they think the constitution ought to be, and who conjure up a representation of their own, must give way to this authority, which declares in the Journals of Parliament *what the constitution is.*

With what propriety, my Lords, is the exertion of this constitutional right, recognized by our ancestors, in full parliament above two hundred years ago, branded with the appellation of arbitrary taxation, and uncandidly compared to the infamous and illegal depredations of the East? Religion has done some mischief in the world, perhaps as much as arbitrary taxation, joined to the three other scourges from Heaven, famine, pestilence, and the sword.

Am

Am I from thence to conclude, with the Right Reverend Divine, because religion gave birth to the horrid massacres in Spanish America, to that of Ireland and St. Bartholomew, that the North Americans ought to have no religion at all; and that they should be held excusable for wishing to exempt themselves from a grievance that has caused such unexampled devastation? Our spiritual Father will, I hope, hereafter judge more favourably of parliamentary taxation, and argue more logically against it, for the sake of that religion he professes, and to which he is a shining light and ornament. When his Lordship shall reassume that candour which his cloth should inspire, and from which his commendable indignation against the butchers and plunderers of millions led him, he will not infer, because

we gave the Americans the form and spirit of our constitution, and made them co-heirs of liberty with ourselves, that they are absolved from all obedience to our laws, or emancipated from the parental authority of Parliament.—We gave them the laws, the liberties of England: more we neither did nor could give, with safety to ourselves; and those who are not satisfied with that gift, do not deserve, and will not long enjoy it; as obedience to the laws is more necessary to the full enjoyment of liberty, than the representation so eagerly contended for. A desire of more than the laws and constitution gave, has once endangered the freedom of Englishmen, and may again engender anarchy and wild uproar; from whence not temporary, but perpetual tyranny, may arise.

That

That the Americans will return to their former obedience, and resume their wonted affection to this country, his Lordship must excuse me, if I cannot credit, on his assertion, or that of any man alive. It is contrary to human nature to forgive those we have injured, or to submit to those we have trampled upon. Besides, fear, the great chain that united America to Britain, is broke. The dread, the terror of the Canadian scalping-knife is removed, and with it the affection, the obedience of the Colonies to their aged and exhausted Parent. If the art of government is founded on experience, we are experimentally taught, that the minds of the Americans are not to be impressed by gentleness and patience. Hitherto every attempt to an accommodation has augmented the insolence of the Americans,

Americans, every delay has been construed into timidity or inability. Neither private property, nor the free agency of individuals, have escaped the fury of these covenanters; all must bend to the impetuosity of their zeal; the opinions of a vast people must conform to the standard of a few; and all America submit to the tyranny of a political inquisition erected at Boston. Notwithstanding these marks of violence and disaffection, exceedingly resembling those of times I am unwilling to recall to your Lordships' memories, there are men in this assembly hardy enough to assert, that our impracticable stateliness removed, a reconciliation would not be the work of an hour. By impracticable stateliness must be meant, the sovereignty of the Crown, and the legislative power of Parliament; for nothing

less

less will satisfy the haughty and turbulent spirits of these American republicans.

Even on their own humiliating and disgraceful terms, a reconciliation with North America would at best be but precarious. Accustomed to triumph, the Americans would look forward to a total independence; and having, by force, freed themselves from the fetters of one act of the British Legislature, would not long submit to any. On the first disgust, the Act of Navigation will be deemed, by these American casuists, an invasion of their several rights; and the present non-importation and exportation covenant be speedily followed by a free importation and exportation, not demanded, but taken. If tame and dilatory measures, supported by an ill-conducted and scanty

E

military

military force, under instructions from an administration, unwilling either to assert or abandon the rights of this nation, are still pursued, the man, my Lords, in this assembly, whose head is whitest with age, need not despair of seeing this extraordinary event; nor of being, in his last years, a helpless spectator of his country's ruin, and of the destruction of its trade, its finances, and its liberties. Whenever this event does happen, I shall envy him his grey hairs, and his infirmities, and look on youth and health as the greatest of human evils.

Of all the misfortunes that attend this devoted nation, procrastination is the greatest. In the state that things are, I could forgive a minister doing wrong, but I cannot forgive his doing nothing. It argues the

the most abject pusillanimity, and a coward is no more fit to be a minister here, than he is to command an army at Boston.

In matters of such vast importance, on which the fate of a great empire depends, it behoves us, my Lords, to be clear in our rights and determined in our resolutions. But I much question, whether *ex post facto* acts of Parliament are a foundation solid enough for us to build upon. Such laws are as dangerous in civil, as they are tyrannical in criminal questions; they are ever unsatisfactory, and rather tend to inflame, than conciliate or convince. Instead of passing empty, unavailing declarations of the rights of Parliament, and constituting ourselves judges in our own cause, let us try the right like men. Let the point in dis-

pute between us and our Colonies be judged by the faces of the law, as it stood when this controversy first occur'd. Matters of as high concern to the liberties of these kingdoms have been, are now, submitted to the determination of the most respectable tribunal in the universe, the twelve Judges of England, at a time when their dependance on the crown was greater, their knowledge and integrity less.

In the mean time, it were to be wished, that every hostile, every penal proceeding against America was stopped, and that mercy, like the dew from heaven, might fall on the heads of the deluded and misguided Colonists; in whom the love of liberty and their *natale solum* cannot be an unpardonable offence in the sight of Englishmen,

lishment, nor be deemed a crime by our
 mild, merciful, and much insulted Sovereign.
 Should the Americans refuse to submit the justice of their cause to this only
 amicable and constitutional mode of decision, on them be the guilt of consequences
 too horrid to anticipate even in imagination.
 It will then be consistent with the spirit and
 dignity of this nation and Parliament, to
 assert their rights by a laudable and manly
 exertion of that power, which so lately triumphed
 over the united fleets and armies of France and Spain; and both nation and
 Parliament will be justified in so doing, not
 only by man, but by that Providence, to
 whose especial protection I humbly recommend
 our cause. If this method, which I
 have ventured to propose with great humility
 and deference, should meet with the
 approbation

approbation of all parties (an event barely possible), there are other points of altercation and dispute which ought finally to be settled and adjusted. One of these points is, the power claimed, and in one instance exercised by Parliament, of altering the charters of the American Colonies.

I confess, my Lords, this is a power of so transcendent a nature, that it ought to be sparingly exercised, and only on great emergencies, and upon the clearest and most evident necessity. Perhaps it ought never to be employed in times so unfortunate as these, lest what was dictated by wisdom should wear the appearance of punishment, and convey a suspicion of resentment. It cannot be admitted, although very positively asserted, that an alteration

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in the charter of an American province, without the consent of the provincials, is the most arbitrary act of government.

These charters are the offspring of the human understanding, and consequently liable to a thousand imperfections: must such hasty and crude productions, fraught, perhaps, with privileges noxious to the whole empire, through the invincible obstinacy of mankind, ever wedded to the customs, manners, and absurdities of their ancestors, remain to all Eternity a thorn in the side of the Mother Country? It is not reasonable, it is not politic, they should.

We have seen the union between the kingdoms of England and Scotland, as solemn and deliberate an act of state as can be met with in the records of any nation, yield to that great and leading maxim, *salus populi*
suprema

Suprema lex esto.—Private property and every species of right has, and must again give way to the general interest of the community; and I know no particular mark of sanctity affixed to the charters of America, that should make Parliament respect them more than the charters of our trading and monied companies, those of the patriotic cities of London and Bristol, or even that of an inferior corporation. They are all grants of the crown, and are all amenable to the jurisdiction of the courts in Westminster-hall. It would be a disgraceful absurdity in the laws of this realm, if the crown (whose own prerogative ceases where it would be injurious to the state) could grant by charter a privilege incompatible with the interest of the nation. Upon the principles contended for, the
same

same charter would be valid because it was granted to an American, which would be void or voidable if granted to an Englishman. It is really the height of folly to assert, that the superlative power of Parliament, which checks and controuls the prerogative of Kings, cannot alter or annul a charter, endangering, possibly, the peace and existence of the British empire.

There is a wonderful sensibility that attends every thing relating to America. It is the criterion of British liberty to be taxed by Parliament ; it is tyranny (we are told) in that Parliament to tax the Americans. It is the highest political excellence to amend our own constitution ; it is the most enormous stretch of arbitrary power to attempt an alteration in that of our Colonies. We, who daily submit to parlia-

F

mentary

mentary taxes, to alterations in our still imperfect constitution, and to amendments in the charters of our greatest corporations, are the freest, the happiest people in the world : To be taxed by the same Parliament, to have their incomprehensible constitutions altered, and their charters regulated by the same wisdom and discretion, for the general advantage of the Public, implies an abject and slavish dependency in our Colonies.

These are contradictions and absurdities, too glaring for any one, but a politician, to believe, and too trifling to merit a serious discussion in this assembly, or to justify my encroaching longer on its patience.

F I N I S.

ERRATA

Page 7. line 1. For *might* read *right*.

14. — 7. For *in* read *is*.

Ibid. — penult. For *here* read *hence*.

28. — 5. For *are* read *ere*.

AT A H S E

At the Court of Sessions at London

the 10th day of June 1791

James O'Connell Esq. of the County of London

vs. The Trustees of the Bank of England























